LAU CHOON LIONG

v.

PAUL LING TECK YIU

HIGH COURT SABAH & SARAWAK, SIBU
TUAN STEVE L. K. SHIM J.
[SUIT NO. 66 OF 1987]
27 OCTOBER 1994

***TORT**: Libel - Letters alleging corrupt practice - Natural and ordinary meaning of words - Whether defamatory - Defence of qualified privilege and fair comment - Whether proved.*

This was an action for libel in which the plaintiff alleged that the defendant, *vide* two separate letters, had written and published defamatory words about him. The two letters, in essence, alleged that the plaintiff was a corrupt person, that he had acted corruptly in dealings with the Public Works Department, (PWD) and that he was guilty of conduct unworthy of his position as a councillor of Majlis Perbandaran Sibu. Copies of these letters had been distributed to several politicians and persons of authority, including the Private Secretary to the Chief Minister of Sarawak. The defendant admitted to writing the two letters but invoked the defence of qualified privilege and fair comment. Before the learned Judge the main issue that arose was whether the words complained of, in their natural and ordinary meaning, were defamatory of the plaintiff, and if so, whether the defence of qualified privilege and fair comment, in the circumstances of this case, could succeed.

Held:

[1] The words complained of, in their natural and ordinary meaning, conveyed a clear and irresistable imputation that the plaintiff was dishonest or corrupt or had acted corruptly in dealings with PWD. They were therefore defamatory of the plaintiff as such imputations tended to bring the plaintiff into public odium and contempt and lowered him in the estimation of right thinking people in Sibu and elsewhere.

[2] Where a defendant relies on the defence of qualified privilege, the *onus* is on him to prove that the occasion for communicating the relevant words is privileged. In reference to qualified privilege, a privileged occasion is an occasion where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

[3] In the position of the defendant and in the circumstances of this case, there could not conceivably be any duty on the defendant's part to send a copy each of the letters to the Private Secretary to the Chief Minister. No right minded man in the position of the defendant would have considered it his duty under the circumstances to make the communication to the Private Secretary to the Chief Minister and nor do the Private Secretary or the Chief Minister have the duty or interest to receive them. There is nothing to show that there existed a reciprocity of duty or interest in such a situation. The defence of qualified privilege, in the circumstances, cannot succeed.

[4] The words complained of cannot be regarded wholly as comment. The allegations that the plaintiff was a corrupt person who had swindled government contract money by collaborating with PWD and that he had obtained the Variation Order No. 26 through corrupt means cannot conceivably be regarded as comments. They are allegations of facts.

[5] Although the allegation of the defendant that "...it is really a shame that our State Government has appointed you as a councillor of Majlis Perbandaran Sibu on the recommendation of SUPP" may fall within the ordinary meaning of comment, it is a comment made in relation to the allegation of fact that the plaintiff was a corrupt person who had swindled government money by collaborating with PWD. This comment is misconceived and without basis whatsoevber as the defendant has not adduced any evidence to prove the truth of his allegation of fact upon which the comment was made. The defendant in any event was actuated by malice and the defence of fair comment, in the circumstances, must fail.

[Judgment for plaintiff. Injunction granted against repetition of libel. Pecuniary damages of RM 30,000 awarded against defendant]

Cases referred to:
Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Bhd. & Anor [1973] 2 MLJ 56 ***(refd)***
Gordon Bakeley Jones v. Clement John Skelton [1963] 1 WLR 1362 ***(refd)***
Lewis v. Daily Telegraph [1964] AC 234 ***(refd)***
Dato Musa bin Hitam v. S. H. Alattas & 2 Ors. [1991] 1 CLJ 314, 321 ***(refd)***
Adam v. Ward [1917] AC 309 ***(refd)***
Abdul Rahman Talib v. Seenivasagam & Anor [1966] 2 MLJ 66 ***(foll)***
Stuart V. Bell [1891] 2 QB 349 ***(cit)***
Hebditch v. Macllwaine [1894] 2 QB 60 ***(cit)***
London Association Greenlands LA [1916] 2 AC 35 ***(refd)***
R v. Rule [1937] 2 KB 375 ***(refd)***
Rajgopal v. Rajan [1972] 1 MLJ 45 ***(refd)***
Watt v. Longsdea [1930] 1 KB 130 ***(foll)***
Workers Party v. Tay Boon Too; Workers' Party v. A-G. [1975] 1 MLJ 47 ***(refd)***
E. Hulton & Co. v. Jones [1910] AC 20 ***(refd)***
Merivale v. Carson [1888] LR 20, QG 275 ***(refd)***
*Silking v. Beaverbrook Newspaper Ltd. [1958] 1 WLR 743****(foll)***
Lee Kuan Yew v. Derek Gwyn Davies & Ors. [1990] 1 MLJ 390 ***(foll)***
JB Jeyaratnam v. Goh Chok Tong [1989] 3 MLJ 1 ***(foll)***

For the plaintiff - Peter S. K. Yip; M/s. Yip & Co
For the defendant - Orlando Chua; M/s. Wong Orlando Chua & Co.

JUDGMENT

Steve L.K. Shim J:
By a writ of summons dated 21 April 1987 and registered as suit no. 66 of 1987, the plaintiff brought an action against the defendant for damages for libel contained in a letter dated 9 March 1987 and an injunction restraining the said defendant from publishing the said libel. Thereafter, the plaintiff took out another writ dated 30 November 1987 against the same defendant which was registered as suit no. 163 of 1987 claiming damages for libel contained in another letter dated 23 July 1987. On 19 September 1988, the Court ordered the 2 suits to be consolidated.

In suit no. 66 of 1987, the plaintiff has pleaded that in a letter dated 9 March 1987 written and signed by the defendant which was addressed to the plaintiff and copied to Datuk Wong Soon Kai, then the Minister of Communications & Works, Sarawak; the Minister of Environment & Tourism, Sarawak and the Private Secretary to the Chief Minister, Sarawak, the defendant had falsely and maliciously wrote and published of him the following words:

> But in the eyes of the undersigned, you are just a corrupt person who has swindled Government contract money by collaborating with PWD.

> It is really a shame that our State Government has appointed you as a councillor of Majlis Perbandaran Sibu on the recommendation of SUPP.

Therein, the plaintiff has alleged that the words above in their natural and ordinary meaning mean or are understood to mean (a) that the plaintiff is a corrupt person, (b) that he is guilty of criminal offences and (c) that he is guilty of conduct unworthy of a councillor of Majlis Perbandaran Sibu.

In suit no. 163 of 1987, the plaintiff has alleged in effect that the defendant had on 23 July 1987 written another letter to him and copied to several known personalities including Datuk Dr. Wong Soon Kai; the Minister of Environment & Tourism; the Private Secretary to the Chief Minister, Sarawak; the Director of Public Works and the Chairman, Federal & State Central Tenders Board, which contained the following words:

> I will leave no stone unturned and will pursue your company's addition V.O. no. 26 for RM112,000 for installing pressed steel roof tanks to the 5-storey class `G' flats buildings for contract no. PWD/HO/AFW2/1980 until I am fully convinced that you have not obtained the said V.O. no. 26 through corrupt means....

It is the plaintiff's contention that the said words in their natural and ordinary meaning mean and are understood to mean (a) that the plaintiff is a corrupt person and (b) that he is guilty of a criminal offence.

At the outset, it has to be noted that in the statements of defence, the defendant has admitted to writing the 2 letters containing the words complained of to the plaintiff and which were also copied to the various people mentioned. However, he has pleaded that the words complained of do not bear or are capable of bearing the defamatory meanings alleged by the plaintiff. As an alternative, he has raised the defences of qualified privilege and fair comment. I shall deal with them separately.

Do the words complained of bear or are they capable of bearing the defamatory meaning or imputation as alleged by the plaintiff? It is trite law that the onus is on the plaintiff to prove that the words complained of are defamatory. The words must be understood in their ordinary and natural sense. As Mohd. Azmi, J. (as he then was) in *Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Bhd. & Anor* [1973] 2 MLJ 56 said *inter-alia*:

> the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the Statement to be true... In the present case the plaintiff is a lecturer in the University of Malaya. To impute that he is dishonest is clearly defamatory...

And the Privy Council in *Gordon Bakeley Jones v. Clement John Skelton* [1963] 1 WLR 1362 at 1370 said:

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning that does not require support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of the words.

Therein, the Privy Council, cited the case of *Lewis v. Daily Telegraph* [1964] AC 234 in which Lord Reid had said this:

> There is no doubt that in actions for libel the question is what the words would convey to the ordinary man; it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of

> worldly affairs.... What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words.....

These passages had been cited by Lim Beng Choon, J. in *Dato Musa bin Hitam v. S. H. Alattas & 2 Ors.* [1991] 1 CLJ 314, 321 who concluded as follows:

> In short, the test is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libellous sense. The test is objective and not subjective and the question is what do the words mean as words and not what the defendant in his own mind meant by them or intended to mean.....

It is in the light of the test formulated and adopted in the cases aforesaid, that the words complained of in the instant case should be considered. The words are simple enough to understand. The imputation arising therefrom is clear and easily ascertainable by an ordinary man described by the Privy Council in *Lewis v. Daily Telegraph, supra*. In my view, the words complained of in the instant case, in their natural and ordinary meaning are defamatory of the plaintiff in that they convey a clear and irresistible imputation that the plaintiff is dishonest, corrupt or has acted corruptly in his dealings with PWD. Such imputation tends to bring the plaintiff, who is a businessman in the building and construction industry, into public odium and contempt and lower him in the estimation of right-thinking people in Sibu and elsewhere. I hold that the words complained of are plainly defamatory of him.

The defendant has, in his statements of defence, in both suits, invoked the plea of qualified privilege. A defamatory statement is privileged when it is published on a privileged occasion. What is a privileged occasion had been described by Lord Atkinson in *Adam v. Ward* [1917] AC 309 and approved by Thomson, C.J. (as he then was) in *Abdul Rahman Talib v. Seenivasagam & Anor* [1966] 2 MLJ 66 in the following manner:

> a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

Where privilege is claimed on the ground that there was a duty on the defendant to make the communication and an interest in the party to whom it is made, such duty and such interest must have existed in fact. It is not sufficient that the defendant honestly and reasonably believed that he was under a duty to make the communication or that the person to whom he made it had some duty or interest in the subject-matter: see *Stuart v. Bell* [1891] 2 QB 349; *Hebditch v. Macllwaine* [1894] 2 QB 60. The duty may be legal, social or moral. Whether there is a duty to communicate which the law will recognize as creating a privileged occasion depends on all the circumstances and no previous decisions can be conclusive. There must be reciprocity of interest, that is to say, the interest must exist in the party to whom the communication is made as well as in the party making it. The interest must be a legitimate one. No privilege will attach where the common interest is one which springs from idle gossip or curiosity only: see *London Association v. Greenlands Ltd.,* [1916] 2 AC 35 *and R. v. Rule* [1937] 2 KB 375.

Having stated the applicable law, what is the position in the instant case? As I have stated, there were 2 letters involved, one dated 9 March 1987 and the other dated 23 July 1987. The first letter was addressed personally to the plaintiff and copied as follows:-

Y.B. Datuk Wong Soon Kai.
Y.B. Minister of Environment & Tourism,
Sarawak.
Private Secretary to Y.A.B. Ketua Menteri,
Sarawak.
And to be freely distributed.

The second letter was also addressed personally to the plaintiff and copied as follows:

Director of ACA, Sarawak.
Peguam Negara, Kuala Lumpur.
(Your PRM/163/76/86(34) dated 3/4/87 refers)
Y.B. Datuk Wong Soon kai.
Y.B. Minister of Environment & Tourism,
Sarawak.
Private Secretary to Y.A.B. Ketua Menteri,
Sarawak.
Director of Public Works, Sarawak.
The Chairman, Federal & State Central Tenders Board, Kuching.
All our Committee Members.

It should be noted here that although the defendant, in his statements of defence, has raised the pleas of qualified privilege and fair comment, such pleas seem to be conspicuously omitted in his testimony *viva voce*. For example under paragraph 4(8) of the amended statement of defence in suit no. 66 of 1987, he has pleaded in effect that the said letter dated 9 March 1987 was copied to Datuk Wong Soon Kit because he was then the Minister of Communications & Works and therefore responsible for public works and development projects in the State; that it was also copied to the Minister of Environment & Tourism because he was responsible for local government and was concerned with the appointment and conduct of a councillor of Majlis Perbandaran Sibu; that it was further copied to the Ketua Menteri because he was responsible for vetting and approving all appointments of persons as councillors. And under paragraph 4(6) of the statement of defence in suit no. 163 of 1987, the defendant has alleged that the letter dated 23 March 1987 was published to the Director of ACA Sarawak because the latter was responsible for the prevention of corruption; that it was published to the Peguam Negara, Kuala Lumpur, because of pervious communication between him and the defendant and that is was published to the Chairman of the Federal & State Central Tenders Board because the awards of government tenders came within his purview. Furthermore, under paragraph 5, he has alleged that as a contractor, taxpayer and secretary of the Building & Civil Engineering Contractors Association of the 3rd, 6th and 7th Divisions (the Association), he had a duty to publish the said letter dated 9 March 1987 to all those persons to whom the letter was sent as they, as taxpayers, had a corresponding duty and or interest to receive it. The same seems to apply to the defendant's pleadings raised under paragraph 4(6) of the statement of defence in suit no. 163 of 1987 where he has alleged that the letter dated 23 July 1987 containing the words complained of was published to the Director of ACA Sarawak because the latter was responsible for the prevention of corruption, etc. Then under paragraph 5 thereof he has alleged that he and those to whom he had copied the said letter had a common and corresponding interest in the matters contained therein and that he was under a legal and/or moral duty to publish the said letter to those to whom it was copied and that they in turn had the like duty and/or interest to receive it. All these are specific allegations; yet strangely enough, the defendant

has made no attempt to adduce evidence in support thereof. It is well settled that where a defendant relies on the defence of qualified privilege, it is for him to prove the facts and circumstances which establish that occasion as privileged: per Ong Hock Sim, J. (as he then was) in *Rajagopal v. Rajan* [1972] 1 MLJ 45. In the instant case, I do not think that the defendant has fulfilled that burden.

In any event, even on the basis of the reasons pleaded by the defendant in his statements of defence as aforesaid, I am of the view that in the position of the defendant and in the circumstances of the case, there could not conceivably be any duty on his part to send a copy each of the letters to the Private Secretary to the Chief Minister, Sarawak, though he might have intended the said letters to come into the hands of the Chief Minister. Adopting the test enunciated by Lord Green in *Watt v. Longsdea* [1930] 1 KB 130, I would say that no right-minded man in the position of the defendant would have considered it his duty under the circumstances to make the communication to the Private Secretary to the Chief Minister nor do I think that the Private Secretary or the Chief Minister had the duty or interest to receive them. There is nothing to show or suggest that there existed a reciprocity of duty and/or interest in such a situation. In the circumstances, the defendant has not established the defence of qualified privilege. This I so hold.

On the assumption that there was qualified privilege, then the question arises as to whether or not there was malice on the part of the defendant in publishing the words complained of. According to the plaintiff, since 1985, the defendant had not been in good terms with him. This is clearly discernible from the many letters written by the defendant. One of the first letters was dated 11 June 1985 which the defendant wrote to the Chairman of the Association stating as follows:

> The Secretary of the Sarawak Building & Civil Engineering Contractors Association has openly complicated M/S. Lau Tiong Ik Construction Sdn. Bhd. of involving in corrupt practice in their Rascom Military complex project at Oya Road, Sibu under contract no. PWD/HO/AFW2/1980.
>
> Since Mr. Lau Choon Liong and his brothers Mr. Lau Choon King and Mr. Lau Chong Ping, all of M/s Lau Tiong Ik Construction Sdn. Bhd. choose to keep silence and refused to take legal action against the complainant to clear their names, I hereby request you to convene a committee meeting to determine their membership rights in accordance with Rule 8(1) of the Rules & Regulations of this Association.

The letter was copied to the plaintiff and his brothers. This was followed shortly thereafter by a letter dated 29 June 1985 from the defendant to the plaintiff which stated:

> I have already openly implicated you and your company M/s. Lau Tiong Ik Construction Sdn. Bhd. of involving in corrupt practice in your Rascom Military Complex project at Oya Road, Sibu under contract no. PWD/HO/AFW2/1980.
>
> If you and your brothers, Mr. Lau Choon King and Mr. Lau Chong Ping were unable to take legal action against me to clear your company's name, I consider it is best that you all should resign as members of this association.
>
> Similarly, if I were found guilty of libel for wrongful defamation, I have to follow the same rule.
>
> While this association cannot tolerate irresponsible accusation, neither can it accommodate corruption.
>
> I think we have to settle the above once and for all. It is either you and your brothers stay or I stay in the association.
>
> I will also refer this matter to the Registrar of Societies and the ACA, if necessary.

The defendant wrote the above letter as Secretary of the Association. Then on 8 July 1985, the defendant again wrote to the plaintiff accusing him of corruption. The letter was to be freely distributed. It stated as follows:

> I have already openly accused you and your company M/s. Lau Tiong Ik Construction Sdn. Bhd. of corruption on the above variation order.
>
> If you are not a coward, you should take legal action against me to clear your company's name. It is really disgraceful of you to make use of the contractors Associations (both State & Sibu Divisional) to give you a helping hand.
>
> If you and your company are not in the wrong, I do not think PWD will be in the wrong, so you do not have to take PWD as an excuse for not taking legal action against me.
>
> I will only interpret your negative response as admittance of guilt.

Apparently not content with the letter aforesaid, the defendant on 4 November 1985 wrote a letter to the Chairman, Sibu Municipal Council, informing him of the plaintiff's corruption. The letter stated thus:

Re: Mr. Lau Choon Liong

> I sincerely wish to inform you that one of your councillors Mr. Lau Choon Liong has corruptly siphoned government's money by collaborating with PWD.
>
> Our Y.B. Datuk Dr. Wong Soon Kai is also aware of the above in his capacity as our State Minister of Infrastructure Development.
>
> There is a Chinese saying of if there is such a father, there is such a son and these may be applicable to your council, if Mr. Lau Choon Liong were allowed to keep his councillor's seat.
>
> Mr. Lau Choon Liong has no other choice but to take the matter to Court to clear his name and sue the undersigned for libel, if he is not a coward and is clean.
>
> I also do not think you want a coward to sit in your council who cannot contribute anything, except maybe (in the case of the above-name councillor) influencing other councillor and your goodself towards corruption.

The said letter was to be freely distributed. The plaintiff did not take action against the defendant at that stage. According to him, he could still tolerate the situation. However, he decided to act when the defendant wrote again accusing him of being a corrupt person who had swindled government money by collaborating with PWD. This was the letter dated 9 March 1987 which the plaintiff alleged contained defamatory statement forming the subject-matter of suit no. 66 of 1987. Subsequently by another letter dated 23 July 1987 to the plaintiff, the defendant repeated his accusation that the plaintiff had obtained a variation order from PWD through corrupt means. This resulted a suit no.163 1987.

It seems clear that the defendant's accusation of corruption against the plaintiff continued unabated notwithstanding the reply from the Permanent Secretary to the Ministry of Communications and Works. The defendant had earlier written to the Minister of Works and Special Functions of the Ministry of Communications and Works alleging falsity in the issuance the Variation Order no. 26 in contract no. PWD/HO/AFW2/1980 for RM112,000. As a result, he received a reply dated 27 June 1985 from the Permanent Secretary of the said ministry which stated as follows:

> I refer to your letter dated 6 April 1985 adressed to the Minister of Works and Special Functions and I am directed to clarify that the approval to use pressed steel tank instead of galvanized steel service tank was recommended by the Divisional Engineer JKR Third Divi-

sion and subsequently approved by Assistant Director (Armed Forces) and the Director JKR respectively.

Hence, it is very apparent that the Variation Order in respect of this Military Complex is in order and I am of the opinion that the allegations are unfounded.

All the letters written by the defendant clearly exhibited a kind of obsession on his part to pursue what he perceived to be a righteous cause of action. It is to be noted that the defendant has admitted in cross-examination that he had no authority by way of resolution from the Association to write most of the letters mentioned above. It would seem that he was carrying on a form of personal crusade akin to a vendetta against the plaintiff in respect of a document, the Variation Order no. 26 issued by PWD to the plaintiff. There is no doubt in my mind that the defendant had acted in a malicious manner. There is ample circumstantial evidence of malice on his part. In the premises, the plea of qualified privilege, must fail. This I so hold.

Now, although the defence of justification has not been expressly pleaded by the defendant in his statements of defence, his testimony on the *voir dire* seems to be directed essentially, if not solely, to such a defence. To establish a plea of justification, the defendant must (1) prove that the defamatory imputation is true; (2) justify the precise imputation complained of and (3) prove the truth of the material statements in the libel. There must be a substantial justification of the whole libel. However, it is not necessary to prove the truth of every word of the libel: see *Workers Party v. Tay Boon Too; Workers' Party v. A-G.* [1975] 1 MLJ 47. It is a complete defence to an action of libel that the defamatory imputation is true. The onus of proving its truth is on the defendant. It is not enough for him to prove that he believed that the imputation was true even though it was published as belief only: see *E. Hulton & Co. v. Jones* [1910] AC 20 cited with approval by Lim Beng Choon, J. in *Dato Musa bin Hitam v. S.H. Alattas & 2 Ors.* [1991] 1 CLJ 314.

In the instant case, the thrust of the defendant's evidence on the *voir dire* is to the effect that since there was no contractual basis for the plaintiff to claim against PWD for the issuance of the variation order no. 26, there was an inference that he had obtained the said Variation Order amounting to RM112,000 dishonestly or by corrupt means. This is also reflected in several of his letters cited earlier including the ones containing the passages forming the subject-matters of the two actions against him. What is this contractual basis? To get a proper perspective on this, it is I think necessary to look at the factual back ground. Here, the plaintiff has testified that in 1980, this company M/s. Lau Tiong Ik Construction Sdn. Bhd. (the company) of which he was and still is Chairman and Managing Director had been awarded a contract by PWD to construct a military complex at Oya Road, Sibu, which included the supply and installation of roof storage tanks to the class "G" quarters. According to him, in the special specifications to the said contract, his company was required to supply and install galvanized steel storage tanks but the drawings annexed thereto required the said tanks to be of pressed steel. This is reflected in clause 5 of the special specifications shown on page 2 of the plaintiff's agreed bundle exh. P1 which stipulates:

5. Provide and fix, welded or riveted galvanized steel service tanks of the size and gauge, complete with all tapping pipes, inspection manholes, low pressure ball value and overflow pipe. Paint internally with an approved grey bitumastic paint and set on bearers in 1" deep galvanized iron tray. The overflow shall discharge outside the building. All to be in accordance to drawing no. PKR/AB/448/W32/22C.

The plaintiff says that as a result of the discrepancy above, and apparently acting under clause 2 of the General Conditions of contract, he wrote to PWD seeking confirmation as to

the type of steel to be used and was told that pressed steel was to be used. The relevant portion of clause 2 shown on page 3 of the agreed bundle exh. P1 stipulates thus:

> ... If the contractor shall find any discrepancy in or divergence between the contract Drawing and/or Specification, he shall immediately refer the same to the Engineer and specifically apply in writing for any necessary instructions from the Engineer in relation thereto. The Engineer may in his absolute discretion and from time to time issue further drawing, details and/or written instructions, written directions and written explanations (all of which are in these conditions collectively referred to as `Engineer's Instruction's) in regard to:
>
> (a) the variation or modification of the design, quality or quantity of the works or the addition or omission or substitution of any work.
>
> (b) any discrepancy in or divergence between the contract Drawings and/or Specification;
>
> .....

The letter in question was dated 15 September 1981 signed by the plaintiff and addressed to the Divisional Engineer, Public Works Department, Third Division, Sibu which was also copied to the following persons: "D.P.W. H.Q. Kuching; RE (AFW), Sibu; QS, PWD, Sibu; on Site Representative, Sibu." The letter states:

> Contract no. PWD/HO/AFW2/1980.
> Sibu Rascom Military Camp.
> **Roof storage tan to class "G" Quarters**:
>
> Under s. (1) Clause (5) of the particular specification of the above contract, the roof storage tanks for class 'G' quarters are to be of galvanized steel instead of pressed steel as stated therein.
>
> From our estimation, the differences in cost for each pressed steel tank will be $1,900.00 higher, based on that the galvanized steel to be of gauge 14.
>
> In view of the above, please confirm in writing which type of tanks you are intended to be used, soonest possible.

There was a reply by PWD in a letter dated 3 October 1981 signed by the Divisional Engineer, 3rd Divisional, Sibu, drawing attention to the drawing annexed to the contract which required pressed steel to be used. The plaintiff, apparently not satisfied with the reply wrote again to the Divisional Engineer in a letter dated 7 October 1981 shown on page 6 of the agreed bundle exh. P1 which states as follows:

> We refer to your letter dated 3 October 1981 and regret to say that your instruction given therein were considered to be improper thus we are unable to follow, not unless our quotation submitted to you has first been accepted and confirmed.
>
> May we quote you hereunder the clause (5) on page (23) of the special specification for your reference.
>
> > Provide and fix, welded or rivetted galvanized steel service tank of the size and gauge, complete with all tapping pipes, inspection manholes, low pressure ball value and over flow pipe. Paint internally with an approved grey bitumastic paint and set on bearers in 1" deep galvanized iron tray. The overflow shall discharge outside the building. All in accordance to drawing no. PKR/AB/448/W32/22C.
>
> From the first sentence of the clause, it is expressly clear that the tanks required to supply by the contractor are to be of galvanized steel and the last sentence of the clause in this context shall mean those items which have not been mentioned or specified in the foregoings are to be executed in accordance to the drawing no. PKR/AB/448/W32/22C by the understanding that special specifications shall in all cases govern our drawings.

On the same date i.e. 7 October 1981, there was a meeting held at the construction site at the Rascom camp, Oya Road, which was attended by officials of PWD including the Resident Engineer Wong Nam Hua and the officers of the plaintiff's company. According to the minutes of the said meeting, the matter of the roof storage tanks was raised. This is reflected in item 4 of the minutes shown on page 8 of the agreed bundle exh. P1 which states:

> 4. Roof Storage Tank: Mr. C.K. Law of M/s. Lau Tiong Ik Construction said that he will refuse to use pressed steel roof storage tank if the difference in cost is not accounted for. According to him, galvanized steel tanks need only to be supplied and fixed as detailed in the contract specification. Q.S. agreed to look into the details and give a reply as soon as possible, whilst R.E. confirmed that pressed steel tanks are to be used.

Following that meeting, another one was held between the officers of PWD and those of the plaintiff's company. The same matter was also raised. This can be seen in item 5 on page 12 of the agreed bundle exh. P1 which states:

> 5. **Roof storage tanks**
> EE (W & D) informed contractors M/S. Lau Tiong Ik that a V.O. will be prepared for charging from galvanized steel tanks to pressed steel tanks.

As a result of the agreement by the Executive Engineer at the second meeting on 3 March1982, and variation order dated 23 October 1982 was issued by PWD to the plaintiff's company for the additional amount of RM112,000 to supply and install pressed steel roof storage tanks instead of galvanized steel storage tanks. The said variation order was checked by the Divisional Engineer, 3rd Division and certified by the Quantity Surveyor and finally approved by the Director of PWD, Datuk Chai Boon Poh. A copy of the said Variation Order no. 26 is shown on page 15 of the agreed bundle exh. P1.

Now somehow, the defendant who was then Secretary of the Building & Civil Engineering Contractors Association, 3rd, 6th & 7th Divisions, got wind of the existence of this Variation Order no. 26 and so on 4 October 1983, he wrote to the Director of PWD inquiring about this. Receiving no reply, he then proceeded to write a series of letters to the various personalities including the Minister of Works & Special Functions, Chairman of Building & Civil Engineering Contractors Association, Chairman or the Sibu Municipal Council and M/S. Yip & Advocates acting for the plaintiff as well as the plaintiff himself. Most of these letters had already been cited *in extenso* in determining the question of malice on the part of the defendant in relation to his defence of qualified privilege. I need not have to reproduce them here.

From the letters written by the defendant, when examined in the light of his testimony in Court, the defendant's reliance upon the plea of justification appears to be grounded on the following premises, namely, (1) that upon a proper construction of the contract documents between PWD and the plaintiff company concerning the Rascom military project, the plaintiff had no right to claim for the additional payment of RM112,000 in respect of the supply and installation of pressed steel roof storage tanks and (2) that other contractors including himself who were awarded similar contracts were not given the same privilege or benefit as the plaintiff.

On the first premise, the defendant has, in his evidence *viva voce*, gone into some detail as to how the relevant clause 5 of the special specifications relied on by the plaintiff, should be construed. According to him, the special specifications and the drawing annexed thereto are complementary to one another and when examined in that context, a reasonable inference can be drawn that the plaintiff's company is required to supply and install pressed

steel storage tanks and not galvanized steel storage tanks. The plaintiff however has adopted a different construction to the said clause 5. This is quite apparent in his evidence when he says that where there is discrepancy between the special specifications and the drawings, the specifications are to have over-riding effect. He has also testified that under contract no. PWD/HO/AFW2/1980, his company would only be required to supply and install welded or riveted galvanized steel storage tanks instead of pressed steel storage tanks. In his letter dated 7 October 1981 to the Divisional Engineer, 3rd Division, the plaintiff had presented his view on the construction of the said clause. This is reflected in that portion of the said letter which states:

> From the first sentence of the clause, it is expressly clear that the tanks required to supply by the contractor are to be of galvanized steel, and the last sentence of the clause in this context shall mean those items which have not been mentioned or specified in the foregoings are to be executed in accordance with the drawing no. PKR/AB/448/W32\22C by the understanding that special specification shall in all cases govern our drawings.

Thus, there is a difference of view in the construction of the relevant clause between the defendant and the plaintiff. It would appear that the construction placed by the plaintiff had been accepted by PWD as a result of which the Variation Order no. 26 was issued. It should be noted that Datuk Michael Parker DW1 the present Director of PWD on being referred the disputed clause has said *inter alia*:

> In the special specification, the contractor was required to supply and install welded or rivetted galvanized steel tanks. Although the drawing mentioned pressed steel tanks, it was perfectly proper for the contractor to follow what was stated in the special specification. This is because the special specification had stated what was required.

Thus, it would seem that from the PWD's point of view, the plaintiff's claim was not without basis and that the variation order issued thereafter had been proper. In the circumstances, I do not see how any dishonesty or corrupt means or motive could be attributed to or imputed into the action or conduct of the plaintiff. Even if we were to accept the defendant's view of the construction of material clause, as correct, I do not think any dishonestly and/or corrupt means or motive can reasonably be drawn therefrom in the the absence of concrete and cogent evidence. The defendant's accusation is based on mere conjecture, supposition and assumption quite unsupported by evidence, direct or circumstantial. It is also manifestly clear that he was not sure whether the allegation was true or not. It was made recklessly.

On the second premise, the evidence shows that the defendant had applied for the same benefit some 12 years after the conclusion of the two projects he did for PWD. Not surprisingly, his request for payment had been rejected by PWD. The defendant has also led evidence from two contractors Ting Chii Hua DW3 and Tang Yew Tan DW4 who, it was alleged, had been awarded the same type of contract by PWD as that with the plaintiff. However, the projects allegedly undertaken by DW3 and DW4 took place in 1982 and 1979 respectively and that, at all material times, they made no requests to PWD on the same basis presented by the plaintiff for the issuance of a variation order. In the circumstances, I do not think that DW3 and DW4 are of any assistance to the defendant's case.

I come now to the plea of fair comment raised by the defendant in his statements of defence. What is the meaning of a fair comment? Lord Esher MR in *Merivale v. Carson* [1888] LR 20, QG 275 explained it in this way:

> I think the meaning is this: is the article in the opinion of the jury beyond that which any fair man, however prejudiced or however strong his opinion may be, would say of the work in question? Every latitude must be given to opinion and to prejudice, and then an ordinary set of men and ordinary judgment must say whether any fair man would have made such a comment on the work..... Mere exaggeration or even gross exaggeration would not make the comment unfair....

Quite obviously, the test is an objective one. Such a test was adopted by Diplock, J. (as he then was) in *Silking v. Beaverbrook Newspaper Ltd.* [1958] 1 WLR 743. In *Lee Kuan Yew v. Derek Gwyn Davies & Ors.* [1990] 1 MLJ 390, Thean, J. stated that where the defendants pleaded fair comment, the Court had to consider whether the words complained of were a statement of fact or a comment and if they were comment, whether it was a fair one made on a matter of public interest. The learned Judge cited with approval *Joyut v. Cycle Trade Publishing Co.* [1904] 2 KB 292 and said that a comment could not be fair which was built up on facts which were not truly stated. He also took opportunity to refer to the judgment of Lord Ackner in *JB Jeyaratnam v. Goh Chok Tong* [1989] 3 MLJ 1 stating:

> It is of course well established that a writer may not suggest or invent facts and then comment on them, on the assumption that they are true. If the facts upon which the comment purports to be made do not exist, the defence of fair comment must fail. The commentator must get his basic facts right.

In the instance case, I do not think that the words complained of can be regarded wholly as comment. Certainly, the allegations that the plaintiff was a corrupt person who had swindled government contract money by collaborating with PWD and that he had obtained the Variation Order no. 26 through corrupt means cannot conceivably be regarded as comments. They are allegations of fact. However, the following words in the allegation that:

> ..... it is really a shame that our State Government has appointed you as a councillor of Majlis Perbandaran Sibu on the recommendation of SUPP.

may fall within the ordinary meaning of comment. It is a comment made in relation to the allegation of fact that the plaintiff was a corrupt person who had swindled government money by collaborating with PWD. This comment is misconceived and without basis whatsoever as the defendant has not adduced any evidence to prove the truth of his allegation of fact upon which the comment is made. In any event, the defendant was actuated by malice, a matter which I have considered in the earlier part of this judgment. In the circumstances, the defence of fair comment must fail.

For all the reasons given, I hold that the plaintiff has succeeded in his suits and he is therefore entitled to pecuniary damages against the defendant for libel. In assessing the quantum of damages, I take into account the very serious nature of the libel; the social standing of the plaintiff and the defendant; that the defendant had published the defamatory statements fasely and maliciously and that there was no apology offered by the defendant. For the distress, humiliation and embarrassment which the plaintiff has suffered as a result of the libel, I award him a sum of RM30,000 as damages. I ought to mention here that this is the amount sought for by the plaintiff as fair and appropriate under the circumstances. I also grant an injunction against repetition of the libel. Costs of these proceedings are to be paid by the defendant to the plaintiff.